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The Honorable John C. Coughenour  
United States District Court Judge  
The Honorable Mary Alice Theiler  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RODNEY WHEELER,

Plaintiff,

vs.

ELEANOR BROGGI, MATTHEW OLMSTEAD;  
and KING COUNTY,

Defendants.

No. 2:19-cv-01410-JCC-MAT

KING COUNTY'S ANSWER TO  
PLAINTIFF'S COMPLAINT FOR  
DAMAGES AND COUNTERCLAIM  
AND JURY DEMAND

Defendants Eleanor Broggi, Matthew Olmstead and King County ("Defendants"), in answer to Plaintiff's complaint, admit, deny and allege as follows:

**I. NATURE OF THE CASE**

1.1. In answering paragraph 1.1 of Plaintiff's complaint, Defendants deny that Defendants Eleanor Broggi and Matthew Olmstead caused Plaintiff to be arrested and charged without probable cause. Defendants deny that Defendants made materially false statements in affidavits for search warrants for Plaintiff's cell phone records. Defendants deny that they made false statements or omitted facts that would have undermined the allegations against Plaintiff. Defendants deny that they ignored evidence and withheld exculpatory evidence. Defendants admit that Plaintiff spent more than two years in pretrial detention before he was acquitted.

KING COUNTY DEFENDANTS' ANSWER TO COMPLAINT  
FOR DAMAGES AND COUNTERCLAIM - 1  
[2:19-CV-01410-MAT]

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1 Defendants are without sufficient information to determine the truth or falsity of the remaining  
2 allegations contained therein, and, therefore, deny the same. Any other or different allegations  
3 are denied.

4                   **II.       PARTIES**

5           2.1.    In answering paragraph 2.1 of Plaintiff's complaint, Defendants are without  
6 sufficient information to determine the truth or falsity of the allegations contained therein, and,  
7 therefore, deny the same.

8           2.2.    In answering paragraph 2.2 of Plaintiff's complaint, Defendants admit.

9           2.3.    In answering paragraph 2.3 of Plaintiff's complaint, Defendants admit that  
10 Matthew Olmstead was at all times relevant to this action a King County Sheriff's Detective,  
11 acting within the scope of his employment as an agent of King County and under color of state  
12 law. As to J. Does 1-4, King County defendants have no obligation to answer allegations  
13 pertaining to John or Jane Does.

14          2.4.    In answering paragraph 2.4 of Plaintiff's complaint, Defendants admit only that  
15 King County is a home rule charter county and a political subdivision of the State of  
16 Washington.

17                   **III.       JURISDICTION AND VENUE**

18          3.1.    In answering paragraph 3.1 of Plaintiff's complaint, Defendants leave the issue of  
19 jurisdiction and venue to the court.

20          3.2.    In answering paragraph 3.2 of Plaintiff's complaint, Defendants leave the issue of  
21 jurisdiction and venue to the court.

22          3.3.    In answering paragraph 3.3 of Plaintiff's complaint, Defendants admit.

1                   **IV. FACTUAL ALLEGATIONS**

2         4.1. In answering paragraph 4.1 of Plaintiff's complaint, Defendants admit that on  
 3 August 31, 2016, a man named Justin Love was shot and killed following an argument outside  
 4 the Motel 6 located at 18900 47th Avenue South in Sea-Tac, Washington. A stray bullet from the  
 5 shooting also hit and wounded another guest who was inside the hotel. Defendants are without  
 6 sufficient information with respect to Justin Love's ethnicity.

7         4.2. In answering paragraph 4.2 of Plaintiff's complaint, Defendants admit that the  
 8 shooting occurred at or about 9:55 p.m.

9         4.3. In answering paragraph 4.3 of Plaintiff's complaint, Defendants admit that the  
 10 suspected shooter and Love were on opposite sides of a fence that divides the Motel 6 parking lot  
 11 from South 189th Street; at the time he was shot, Love was near the fence from inside the  
 12 parking lot and the shooter was on the other side. Defendants are without sufficient information  
 13 as to whether Love was climbing the fence at the time he was shot, and thereby deny the same.

14         4.4. In answering paragraph 4.4 of Plaintiff's complaint, Defendants admit that three  
 15 eyewitnesses gave detailed statements to the police: Michael Meyer and William Newell (two of  
 16 Love's friends), and Brian Falgout, an uninvolved witness parked nearby. Defendants deny that  
 17 the three eyewitnesses were in close proximity to the suspected shooter.

18         4.5. In answering paragraph 4.4 of Plaintiff's complaint, Defendants deny.

19         4.6. In answering paragraph 4.6 of Plaintiff's complaint, Defendants admit that  
 20 Meyer, who was climbing the fence next to Love when Love was shot, spoke to one of the first  
 21 officers to respond to the scene and gave a description of the shooter. Defendants deny that the  
 22 description alleged by Plaintiff is the complete description.

1       4.7. In answering paragraph 4.7 of Plaintiff's complaint, Defendants admit that in a  
 2 recorded statement taken less than two hours after the shooting, Meyer gave a description of the  
 3 suspected shooter. Defendants deny the description alleged by Plaintiff is the complete  
 4 description.

5       4.8. In answering paragraph 4.8 of Plaintiff's complaint, Defendants admit that  
 6 Newell, who was also near Love at the fence, gave a description of the suspected shooter in a  
 7 recorded statement taken after the shooting. Defendants deny the description alleged by Plaintiff  
 8 is the complete description.

9       4.9. In answering paragraph 4.9 of Plaintiff's complaint, Defendants admit that  
 10 Newell gave a description of the suspected shooter. Defendants deny the description alleged by  
 11 Plaintiff is the complete description.

12       4.10. In answering paragraph 4.10 of Plaintiff's complaint, Defendants admit that  
 13 Newell told police he had seen the suspect at the Motel 6 numerous times jumping the fence.  
 14 Defendants are without sufficient information to determine the truth or falsity of additional  
 15 allegations contained therein, and, therefore, deny the same.

16       4.11. In answering paragraph 4.11 of Plaintiff's complaint, Defendants admit that at  
 17 approximately 10:33 p.m., Falgout called 911 and reported seeing someone wearing a black  
 18 hoodie at a blue apartment complex near the scene of the shooting. Defendants deny that the  
 19 statements alleged by Plaintiff are the complete statements made by Falgout to the 911 operator.

20       4.12. In answering paragraph 4.12 of Plaintiff's complaint, Defendants admit that in a  
 21 written statement taken by the police at 11:30 p.m. on August 31, 2016, Falgout stated that the  
 22 shooter was wearing "all dark clothes" and drove away in "a small black car." Defendants deny  
 23 that the statements alleged by Plaintiff are his complete written statement.

1       4.13. In answering paragraph 4.13 of Plaintiff's complaint, Defendants admit that in a  
 2 follow-up interview on September 16, 2016, Falgout stated that he "thought" the suspected  
 3 shooter was wearing "a black hoodie," although the suspected shooter was standing in the dark.  
 4 Falgout stated "I don't know for sure." Falgout stated he thought the suspected shooter drove  
 5 away in a "little black car." Defendants deny any remaining allegations.

6       4.14. In answering paragraph 4.14 of Plaintiff's complaint, Defendants admit that  
 7 Newell described the shooter as wearing a brown backpack. Defendants are without sufficient  
 8 information to determine the truth or falsity of the remaining allegations as to contained therein  
 9 as to other witnesses, and therefore, deny the same.

10       4.15. In answering paragraph 4.15 of Plaintiff's complaint, Defendants deny that  
 11 Wheeler did not match the descriptions of the shooter. Defendants admit that Plaintiff was seen  
 12 on surveillance video passing near the scene of the shooting immediately before the shooting.  
 13 Defendants deny that Plaintiff was seen on surveillance video passing near the scene of the  
 14 shooting before the altercation. Defendants admit only that Plaintiff was wearing jeans, a  
 15 hoodie, a baseball cap. Defendants are without sufficient information to determine the truth or  
 16 falsity of the allegations regarding the colors of Plaintiff's clothing, his hairstyle and whether  
 17 Plaintiff was driving a black car and therefore, deny the same and any remaining factual  
 18 allegations.

19       4.16. In answering paragraph 4.16 of Plaintiff's complaint, Defendants admit that  
 20 surveillance video shows Plaintiff exiting the motel and walking towards a fence at the edge of  
 21 the property. Defendants are without sufficient information to determine the truth or falsity of  
 22 the allegations contained therein regarding Plaintiff's emotional state at the time, and therefore,  
 23 deny the same. Defendants deny that Plaintiff was gone before the altercation that led to the

1 shooting began. Defendants admit Newell and Love are shown on surveillance video coming out  
 2 of their motel room. Defendants are without sufficient information to determine the truth or  
 3 falsity of the remaining allegations contained therein, and, therefore, deny the same.

4       4.17. In answering paragraph 4.17 of Plaintiff's complaint, Defendants are without  
 5 sufficient information to determine the truth or falsity of the allegations contained therein, and,  
 6 therefore, deny the same.

7       4.18. In answering paragraph 4.18 of Plaintiff's complaint, Defendants are without  
 8 sufficient information to determine the truth or falsity of the allegations contained therein, and,  
 9 therefore, deny the same.

10      4.19. In answering paragraph 4.19 of Plaintiff's complaint, Defendants admit that  
 11 Detective Eleanor Broggi was assigned to the investigation of the Motel 6 homicide as lead  
 12 investigator. Defendants admit that Detective Matthew Olmstead assisted in the investigation.  
 13 To the extent that additional factual allegations are intended, they are hereby denied.

14      4.20. In answering paragraph 4.20 of Plaintiff's complaint, Defendants admit on  
 15 September 6 and 7, 2016, Detective Broggi sent witness Newell emails with photos of black men  
 16 taken from the Motel 6 surveillance video. Defendants are without sufficient information to  
 17 determine the truth or falsity of the remaining allegations, and, therefore, deny the same.

18      4.21. In answering paragraph 4.21 of Plaintiff's complaint, Defendants deny the photos  
 19 were of poor quality and highly suggestive. Defendants admit that photos sent on September 7,  
 20 2016 were of the Plaintiff, and they displayed a date and timestamp showing him in the motel  
 21 shortly before the murder.

22      4.22. In answering paragraph 4.22 of Plaintiff's complaint, Defendants admit that  
 23 Plaintiff was the only man shown in the photos with a backpack and Detective Broggi sent the

1 photos only to Newell, the only witness who claimed to have seen a brown backpack.

2 Defendants deny the remaining allegations.

3       4.23. In answering paragraph 4.23 of Plaintiff's complaint, Defendants are without  
4 sufficient information to determine the truth or falsity of the remaining allegations contained  
5 therein, and, therefore, deny the same.

6       4.24. In answering paragraph 4.24 of Plaintiff's complaint, Defendants are without  
7 sufficient information to determine the truth or falsity of the remaining allegations contained  
8 therein, and, therefore, deny the same.

9       4.25. In answering paragraph 4.25 of Plaintiff's complaint, Defendants deny.

10      4.26. In answering paragraph 4.26 of Plaintiff's complaint, Defendants admit that in an  
11 email written on September 9 from Detective Broggi to Sgt. Ryan Abbott, she wrote that an  
12 unidentified individual was "our shooter but no pc yet," and wrote that "Once identified I need to  
13 do a montage." Defendants deny any remaining allegations.

14      4.27. In answering paragraph 4.27 of Plaintiff's complaint, Defendants admit that on  
15 September 15, Detective Broggi traveled to Oregon to meet with Newell and Meyer and conduct  
16 a photo montage with each of them separately. Defendants admit that the montage photo of  
17 Wheeler did not show him wearing a backpack. Defendants deny any remaining allegations.

18      4.28. In answering paragraph 4.28 of Plaintiff's complaint, Defendants admit that on  
19 September 15, Detective Broggi sent a copy of a photograph of a person, later identified as  
20 Plaintiff, to the prosecutor with the message: "This is going to be our shooter." Defendants deny  
21 any remaining allegations.

1       4.29. In answering paragraph 4.29 of Plaintiff's complaint, Defendants admit that on  
2 September 15, neither Newell nor Meyer picked Plaintiff from the montage. Defendants deny  
3 the remaining allegations.

4       4.30. In answering paragraph 4.30 of Plaintiff's complaint, Defendants deny.

5       4.31. In answering paragraph 4.31 of Plaintiff's complaint, Defendants are without  
6 sufficient information to determine the truth or falsity of the remaining allegations contained  
7 therein, and, therefore, deny the same.

8       4.32. In answering paragraph 4.32 of Plaintiff's complaint, Defendants admit.

9       4.33. In answering paragraph 4.33 of Plaintiff's complaint, Defendants deny.

10      4.34. In answering paragraph 4.34 of Plaintiff's complaint, Defendants are without  
11 sufficient information to determine the truth or falsity of the remaining allegations contained  
12 therein, and, therefore, deny the same.

13      4.35. In answering paragraph 4.35 of Plaintiff's complaint, Defendants admit in the  
14 warrant affidavit, Detective Olmstead wrote that "Newell advised that he had seen the same  
15 black male roughly 20 times during the preceding weeks that he had been staying at the motel."  
16 Defendants deny the remainder of this paragraph.

17      4.36. In answering paragraph 4.36 of Plaintiff's complaint, Defendants admit in the  
18 warrant affidavit, Detective Olmstead stated that "Police received reports from witnesses that the  
19 suspect then fled the area, possibly in a vehicle." Defendants deny the remainder of the  
20 paragraph.

21      4.37. In answering paragraph 4.37 of Plaintiff's complaint, Defendants admit in the  
22 warrant affidavit, Detective Olmstead stated that the surveillance video of a "possible suspect"  
23 "matched the description provided by Newell." Defendants deny the remainder of the paragraph.

1       4.38. In answering paragraph 4.38 of Plaintiff's complaint, Defendants deny.

2       4.39. In answering paragraph 4.39 of Plaintiff's complaint, Defendants admit in the  
 3 warrant affidavit, Detective Olmstead stated that "[s]till photographs of the video depicting the  
 4 possible suspect were shown to Meyer and Newell separately. Both agreed that the still  
 5 photographs appeared to be the same person who shot Love." Defendants admit the statement  
 6 pertaining to Meyer was in error, because Meyer was not shown the photographs. Defendants  
 7 deny the remainder of the paragraph.

8       4.40. In answering paragraph 4.40 of Plaintiff's complaint, Defendants admit that the  
 9 affidavit omitted the fact that neither Newell nor Meyer identified Plaintiff from a photographic  
 10 montage. Defendants deny this omission was false and misleading. To the extent additional  
 11 factual allegations are intended or legal conclusions contrary to applicable law are alleged, they  
 12 are hereby denied.

13       4.41. In answering paragraph 4.41 of Plaintiff's complaint, Defendants admit the  
 14 warrant affidavit says that Daniela Cuadra and Abelina Kidane reported that the Plaintiff called  
 15 them about 20 minutes after the shooting, "Wheeler called to inquire how [Cuadra] was doing  
 16 and asked numerous questions about the happenings at the Motel 6. Cuadra thought it strange"  
 17 and that "Wheeler continued to call Cuadra, encouraging her to leave the motel and asked a lot of  
 18 further questions regarding police activity." Defendants deny the remainder of the paragraph.

19       4.42. In answering paragraph 4.42 of Plaintiff's complaint, Defendants make no  
 20 response as the allegations appear to contain only legal conclusions for which no response is  
 21 required. However, to the extent factual allegations are intended or legal conclusions contrary to  
 22 applicable law are alleged, they are hereby denied.

23       4.43. In answering paragraph 4.43 of Plaintiff's complaint, Defendants deny.

1       4.44. In answering paragraph 4.44 of Plaintiff's complaint, Defendants are without  
2 sufficient information to determine the truth or falsity of the remaining allegations contained  
3 therein, and, therefore, deny the same.

4       4.45. In answering paragraph 4.45 of Plaintiff's complaint, Defendants admit.

5       4.46. In answering paragraph 4.46 of Plaintiff's complaint, Defendants deny.

6       4.47. In answering paragraph 4.47 of Plaintiff's complaint, Defendants admit.

7       4.48. In answering paragraph 4.48 of Plaintiff's complaint, Defendants make no  
8 response as the allegations appear to contain only legal conclusions for which no response is  
9 required. However, to the extent factual allegations are intended or legal conclusions contrary to  
10 applicable law are alleged, they are hereby denied.

11       4.49. In answering paragraph 4.49 of Plaintiff's complaint, Defendants admit the  
12 warrant affidavit stated, "Newell advised that he had seen the same black male roughly 20 times  
13 during the preceding weeks that he had been staying at the motel." Defendants make no  
14 response to the remainder of the paragraph as the allegations appear to contain only legal  
15 conclusions for which no response is required. However, to the extent factual allegations are  
16 intended or legal conclusions contrary to applicable law are alleged, they are hereby denied.

17       4.50. In answering paragraph 4.50 of Plaintiff's complaint, Defendants admit in the  
18 warrant affidavit, Detective Olmstead stated that "Police received reports from witnesses that the  
19 suspect fled the area, possibly in a vehicle." Defendants make no response to the remainder of  
20 the paragraph as the allegations appear to contain only legal conclusions for which no response is  
21 required. However, to the extent factual allegations are intended or legal conclusions contrary to  
22 applicable law are alleged, they are hereby denied.

1       4.51. In answering paragraph 4.51 of Plaintiff's complaint, Defendants admit in the  
 2 warrant affidavit, Detective Olmstead stated that the surveillance video of Plaintiff "matched the  
 3 description provided by Newell." Defendants make no response to the remainder of the  
 4 paragraph as the allegations appear to contain only legal conclusions for which no response is  
 5 required. However, to the extent factual allegations are intended or legal conclusions contrary to  
 6 applicable law are alleged, they are hereby denied.

7       4.52. In answering paragraph 4.52 of Plaintiff's complaint, Defendants deny.

8       4.53. In answering paragraph 4.53 of Plaintiff's complaint, Defendants admit that in the  
 9 warrant affidavit, Detective Olmstead stated that "[s]till photographs of the video depicting the  
 10 possible suspect were shown to Meyer and Newell separately. Both agreed that the still  
 11 photographs appeared to be the same person who shot Love." Defendants admit the statement  
 12 pertaining to Meyer was in error, because Meyer was not shown the photographs. Defendants  
 13 make no response to the remainder of the paragraph as the allegations appear to contain only  
 14 legal conclusions for which no response is required. However, to the extent factual allegations  
 15 are intended or legal conclusions contrary to applicable law are alleged, they are hereby denied.

16       4.54. In answering paragraph 4.54 of Plaintiff's complaint, Defendants admit that the  
 17 affidavit did not include the fact that Meyer and Newell had been shown a photographic  
 18 montage. Defendants deny these omissions were misleading. Defendants make no response to  
 19 the remainder of the paragraph as the allegations appear to contain only legal conclusions for  
 20 which no response is required. However, to the extent factual allegations are intended or legal  
 21 conclusions contrary to applicable law are alleged, they are hereby denied.

22       4.55. In answering paragraph 4.55 of Plaintiff's complaint, Defendants admit in the  
 23 warrant affidavit, Detective Olmstead stated that Daniela Cuadra and Abelina Kidane told police

1 that about 20 minutes after the shooting, "Wheeler called to inquire how she was doing and  
 2 asked numerous questions about the happenings at the Motel 6. Cuadra thought it  
 3 strange...Wheeler continued to call Cuadra, encouraging her to leave the motel and asked a lot of  
 4 further questions regarding police activity." Defendants deny this statement is false and  
 5 misleading. Defendants deny that neither woman was a reliable witness. Defendants are without  
 6 sufficient information as to all phone records, and therefore, deny the same.

7       4.56. In answering paragraph 4.56 of Plaintiff's complaint, Defendants admit in the  
 8 warrant affidavit, Detective Olmstead stated that Plaintiff's phone records "revealed multiple  
 9 instances of phone activity by [his] number utilizing cellular towers in close proximity to the  
 10 Motel 6, just prior to the murder." Defendants deny the statement was false or misleading, and  
 11 any remaining allegations.

12       4.57. In answering paragraph 4.57 of Plaintiff's complaint, Defendants admit in the  
 13 warrant affidavit, Detective Olmstead stated that "[a]t the scene of the homicide on 8/31/16,  
 14 witness Newell and others described a brown leather backpack." Defendants admit this  
 15 statement was made in error because only Newell described the brown leather backpack,  
 16 although another witness described a backpack. Defendants make no response to the remainder  
 17 of the paragraph as the allegations appear to contain only legal conclusions for which no  
 18 response is required. However, to the extent factual allegations are intended or legal conclusions  
 19 contrary to applicable law are alleged, they are hereby denied.

20       4.58. In answering paragraph 4.58 of Plaintiff's complaint, Defendants make no  
 21 response as the allegations appear to contain only legal conclusions for which no response is  
 22 required. However, to the extent factual allegations are intended or legal conclusions contrary to  
 23 applicable law are alleged, they are hereby denied.

1       4.59. In answering paragraph 4.59 of Plaintiff's complaint, Defendants deny.

2       4.60. In answering paragraph 4.60 of Plaintiff's complaint, Defendants are without  
3 sufficient information to determine the truth or falsity of the remaining allegations contained  
4 therein, and, therefore, deny the same.

5       4.61. In answering paragraph 4.61 of Plaintiff's complaint, Defendants admit.

6       4.62. In answering paragraph 4.62 of Plaintiff's complaint, Defendants admit.

7       4.63. In answering paragraph 4.63 of Plaintiff's complaint, Defendants deny that the  
8 probable cause certificate contained false or misleading statements. Defendants deny that false  
9 or misleading statements or material omissions were made knowingly and with reckless  
10 disregard for the truth and for Plaintiff's constitutional rights. To the extent factual allegations  
11 are intended or legal conclusions contrary to applicable law are alleged, they are hereby denied.

12      4.64. In answering paragraph 4.64 of Plaintiff's complaint, Defendants admit in the  
13 probable cause certification, Detective Broggi wrote that eyewitness Meyer reported the  
14 argument began "when a black male subject, whom he believed was shorter, but slender with  
15 dreadlocks threw a rock at their window. This subject had done the same thing to them while  
16 they were at the motel the week prior." Defendants deny the remainder of this paragraph.

17      4.65. In answering paragraph 4.65 of Plaintiff's complaint, Defendants admit in the  
18 probable cause certificate, Detective Broggi wrote that eyewitness Newell said "a black male,  
19 about 6-0 with a skinny build, had been throwing rocks at the room [Newell] was sharing with  
20 his coworkers while yelling, 'crackers'. Newell further described this male as wearing dark  
21 clothing, a baseball cap, and a brown suede backpack." Defendants deny the remainder of this  
22 paragraph.

1       4.66. In answering paragraph 4.66 of Plaintiff's complaint, Defendants admit in the  
2 probable cause certification, Detective Broggi wrote that eyewitness Newell said "he has seen  
3 this subject at the motel numerous times" and wrote that that male "is depicted on Motel 6 video  
4 on several dates, including the date of the murder." Defendants deny the remainder of this  
5 paragraph.

6       4.67. In answering paragraph 4.67 of Plaintiff's complaint, Defendants admit.

7       4.68. In answering paragraph 4.68 of Plaintiff's complaint, Defendants deny.

8       4.69. In answering paragraph 4.69 of Plaintiff's complaint, Defendants admit Detective  
9 Broggi wrote a cursory summary of Newell's description in a contemporaneous email on  
10 September 7, 2016. Defendants deny the remainder of this paragraph.

11      4.70. In answering paragraph 4.70 of Plaintiff's complaint, Defendants deny.

12      4.71. In answering paragraph 4.71 of Plaintiff's complaint, Defendants deny.

13      4.72. In answering paragraph 4.72 of Plaintiff's complaint, Defendants admit that in the  
14 probable cause certification, Detective Broggi wrote that Daniela Cuadra told police that shortly  
15 after the shooting, Plaintiff "kept calling" Cuadra, "checking on her welfare and encouraging her  
16 to leave the hotel." Defendants deny the remainder of the paragraph.

17      4.73. In answering paragraph 4.73 of Plaintiff's complaint, Defendants admit that in the  
18 probable cause certification, Detective Broggi wrote that the warrant for Plaintiff's cell phone  
19 records "showed that the phone was used before the time of the homicide in the area of this  
20 incident as indicated by cell phone tower records." Defendants deny the remainder of this  
21 paragraph.

4.74. In answering paragraph 4.74 of Plaintiff's complaint, Defendants admit that Detective Broggi signed the Certification for Determination of Probable Cause filed in King County Cause No. 16-1-05587-3. Defendants deny the remainder of this paragraph.

4.75. In answering paragraph 4.75 of Plaintiff's complaint, Defendants deny.

4.76. In answering paragraph 4.76 of Plaintiff's complaint, Defendants deny.

4.77. In answering paragraph 4.77 of Plaintiff's complaint, Defendants deny.

4.78. In answering paragraph 4.78 of Plaintiff's complaint, Defendants deny.

4.79. In answering paragraph 4.79 of Plaintiff's complaint, Defendants deny.

4.80. In answering paragraph 4.80 of Plaintiff's complaint, Defendants deny.

## **V. CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**  
(Federal Civil Rights Violations Under 42 U.S.C. § 1983)

Answering Plaintiff's FIRST CAUSE OF ACTION portion of the complaint, re-allege their previous responses to Plaintiff's complaint as if fully set forth herein.

Plaintiff's causes of action 5.1-5.3 appear to contain legal conclusions for which no response is required. However, to the extent factual allegations are intended and/or legal conclusions contrary to applicable law are alleged they are hereby denied.

## SECOND CAUSE OF ACTION (State Law Claim)

Answering Plaintiff's SECOND CAUSE OF ACTION portion of the complaint, Defendants re-allege their previous responses to Plaintiff's complaint as if fully set forth herein.

Plaintiff's cause of action 5.4 appears to contain legal conclusions for which no response is required. However, to the extent factual allegations are intended and/or legal conclusions contrary to applicable law are alleged they are hereby denied.

## **VI. JURY DEMAND**

6.1. Defendants request that this matter be tried by a jury.

## VII. REQUEST FOR RELIEF

Answering paragraphs 7.1-7.5, Defendants deny that Plaintiff is entitled to any of the relief sought in paragraphs 7.1-7.5 of their complaint. Defendants further deny that Plaintiff has any valid claim for relief or that he is entitled to any of the relief sought in any portion of his complaint. To the extent factual allegations are intended and/or legal conclusions contrary to applicable law are alleged they are hereby denied. King Country denies any remaining allegations contained in the Plaintiff's complaint not expressly admitted herein.

BY WAY OF FURTHER ANSWER and AFFIRMATIVE DEFENSES, and without admitting anything previously denied, Defendants allege as follows:

1. Plaintiff has failed to state a claim upon which relief may be granted.
  2. If Plaintiff suffered any damages, recovery therefore is barred by Plaintiff's failure to mitigate damages.
  3. Plaintiff's damages may have been proximately caused or contributed to by the negligence or fault of Plaintiff.
  4. The injuries and/or damages sustained by the Plaintiff, if any, were not the proximate cause of any action or omission by Defendants.
  5. Plaintiff's injuries and/or damages, if any, arose from causes intervening and/or superseding any actions or inactions by Defendants.
  6. Plaintiff's claims are barred by the applicable statute of limitations.
  7. Plaintiff has failed to state a claim pursuant to 42 U.S.C. § 1983.

8. Defendants at all times acted in good faith in the performance of duties and are therefore immune from suit and entitled to discretionary immunity for the matters alleged in the Plaintiff's complaint.

9. Plaintiff has failed to identify any custom or policy of King County causing him any injury.

10. If the Plaintiff sustained any injury or damage, the same was the result of reasonable and required conduct of Defendants under the circumstances and was excusable and justifiable in connection with the detention.

11. Defendants assert the defense of qualified immunity.

12. Defendants assert collateral estoppel.

Defendants reserve the right to amend this answer, including these affirmative defenses, if and when additional facts are discovered which support such amendments.

**COUNTERCLAIMS BY DETECTIVE ELEANOR BROGGI AND DETECTIVE  
MATTHEW OLMLSTEAD**

Detective Eleanor Broggi and Detective Matthew Olmstead assert the following counterclaim:

## I. PARTIES

1. Detective Eleanor Broggi is an individual who resides in the Western District of Washington.

2. Detective Matthew Olmstead is an individual who resides in the Western District of Washington.

1                   **II. JURISDICTION AND VENUE**

- 2                   3. This Court has discretion to exercise supplemental jurisdiction over this state law  
3                   claim.  
4                   4. Venue is proper in the Western District of Washington in Seattle.

5                   **III. FACTUAL ALLEGATIONS**

- 6                   5. Detective Eleanor Broggi and Detective Matthew Olmstead are deputies of the King  
7                   County Sheriff's Office.  
8                   6. On August 31, 2016, at approximately 9:55 p.m., Justin Love was shot and killed in  
9                   the parking lot of the Motel 6 located at 18900 47<sup>th</sup> Avenue South, SeaTac,  
10                  Washington. John Killarzoac was shot when a bullet penetrated the wall of the Motel  
11                  6 and struck him.  
12                  7. Members of the King County Sheriff's Office, including Detective Broggi and  
13                  Detective Olmstead, investigated the shooting of Love and Killarzoac.  
14                  8. On August 31, 2016, members of the King County Sheriff's Office identified three  
15                  individuals who were in the parking lot and witnessed the shooting: William Newell,  
16                  Michael Meyer and Brian Falgout.  
17                  9. All eyewitnesses to the shooting described the shooter as a black male. The  
18                  eyewitnesses gave differing clothing and hair descriptions.  
19                  10. All eyewitnesses to the shooting described the shooter as standing outside of the  
20                  fence at the time of the shooting. Shell casings at the scene corroborated that the  
21                  shooter was standing outside the fence at the time of the shooting.  
22                  11. Of the eyewitnesses, only Newell and Meyer interacted with the shooter.  
23

1       12. Of the eyewitnesses, Newell had the most interaction with the shooter. Newell  
2                  reported to members of the King County Sheriff's Office that he and Love had argued  
3                  with a person standing in the parking lot from their motel room window. Newell  
4                  reported that he and Love exited the motel to the parking lot and continued to argue  
5                  with the same person, who had climbed the fence that separated the motel parking lot  
6                  from the area behind the parking lot.

7       13. Newell told members of the King County Sheriff's Office that the shooter was a black  
8                  male carrying a brown suede backpack and that he had crossed the parking lot and  
9                  climbed over the fence immediately prior to shooting Love.

10      14. On August 31, 2016, shortly after the shooting, Jessica Hale told Deputy William  
11                  Harris that she saw a black male wearing a grey hoodie and a backpack on the other  
12                  side of the fence at the time of the shooting. Hale said she saw this person fire two  
13                  shots from a gun.

14      15. On September 1, 2016, members of the King County Sheriff's Office administered a  
15                  polygraph examination to Newell and Meyer. The polygraph examinations indicated  
16                  neither of the men were being deceptive.

17      16. Video surveillance gathered by members of the King County Sheriff's Office showed  
18                  a black male carrying a brown backpack and exiting the motel at approximately 9:50  
19                  p.m. The video showed the male crossing the parking lot and climbing over the fence  
20                  near where Love was shot on August 31, 2016.

21      17. Video surveillance obtained by members of the King County Sheriff's Office showed  
22                  that near the time of the shooting no other individual crossed the parking lot and  
23                  climbed over the fence where Love was shot.

1       18. On or about September 14, 2016, members of the King County Sheriff's Office  
2                  identified Abelina Kidane and Daniela Cuadra as residents of the Motel 6 on August  
3                  31, 2016. When located and questioned, Kidane and Cuadra stated that Rodney  
4                  Wheeler left their motel room carrying a brown leather backpack at approximately  
5                  9:50 p.m. on August 31, 2016. Cuadra provided cell phone numbers for Wheeler,  
6                  including (253) 258-7240.

7       19. Cuadra identified Wheeler when shown still shots of surveillance video from the  
8                  Motel 6 of a black male at the motel at approximately at 9:50 p.m. on August 31,  
9                  2016.

10      20. Detective Olmstead obtained a search warrant for cell phone records of the phone  
11                  numbers provided by Cuadra. The records obtained for (253) 258-7240 showed that  
12                  the phone was in the vicinity of the Motel 6 at 9:55 p.m. on August 31, 2016. The  
13                  records showed that the phone number was registered to Rosemary McClam.  
14                  Rosemary McClam is the mother of Lavinia McClam. Lavinia McClam lived with  
15                  Wheeler in August, 2016.

16      21. Wheeler was at the Motel 6 on August 31, 2016. Wheeler is the person seen on  
17                  surveillance video crossing the parking lot and climbing the fence carrying a brown  
18                  leather backpack at approximately 9:50 p.m. on August 31, 2016.

19      22. As of August 2016, Wheeler had multiple prior felony convictions, including prior  
20                  convictions for unlawful possession of a firearm.

21      23. Based on the information known to Detective Broggi and Detective Olmstead on  
22                  September 16, 2016, there was probable cause to believe that Rodney Wheeler was

1 involved in criminal activity and that evidence of the criminal activity could be found  
2 in the cell phone records.

3 24. Based on the information known to Detective Broggi and Detective Olmstead on  
4 October 4, 2016, there was probable cause to believe that Rodney Wheeler committed  
5 murder in the second degree, assault in the second degree and unlawful possession of  
6 a firearm in the second degree on August 31, 2016, and that evidence of the criminal  
7 activity could be found at his residence.

8 25. Detective Broggi and Detective Olmstead provided all material evidence from the  
9 investigation of Rodney Wheeler to the King County Prosecuting Attorney's Office.

10 26. On October 5, 2016, the King County Prosecuting Attorney's Office charged Rodney  
11 Wheeler with the crimes of murder in the second degree, assault in the second degree  
12 and unlawful possession of a firearm in the second degree.

13 27. Wheeler has instituted the present action against Detective Broggi and Detective  
14 Olmstead with knowledge that the allegations therein are false, unfounded, malicious  
15 and without probable cause for the filing of this action, and/or this action was filed as  
16 part of a conspiracy to misuse the judicial process by filing an action known to be  
17 false and unwarranted.

18 **IV. COUNTERCLAIM – MALICIOUS PROSECUTION**

19 Rodney Wheeler's lawsuit constitutes malicious prosecution against a law enforcement  
20 officer in violation of RCW 4.24.350.

21 **V. RELIEF SOUGHT**

22 Detective Eleanor Broggi and Detective Matthew Olmstead seek the following relief:  
23

1       28. An award of reasonable attorney's fees and costs in defending against this action  
2                          pursuant to RCW 4.24.350(2).

3       29. Liquidated damages as provided by RCW 4.24.350(2).

4       30. A judgment against Rodney Wheeler for malicious prosecution pursuant to RCW  
5                          4.24.350.

6       WHEREFORE, Defendants pray that the Plaintiff take nothing by his complaint, that the  
7       complaint be dismissed with prejudice and that Defendants be awarded liquidated damages and  
8       costs and reasonable attorneys' fees incurred herein and for such other and further relief as the  
9       Court deems just and equitable.

10  
11      DATED this 18<sup>th</sup> day of May, 2020.

12                          DANIEL T. SATTERBERG  
13                          King County Prosecuting Attorney

14                          By: s/ Ann M. Summers  
15                          ANN M. SUMMERS, WSBA #21509  
16                          Senior Deputy Prosecuting Attorney

17                          By: s/ Allyson K. Zerba  
18                          ALLYSON K. ZERBA, WSBA # 29369  
19                          Senior Deputy Prosecuting Attorney

20                          King County Prosecuting Attorney  
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22                          Seattle, WA 98104  
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24                          Attorneys for King County Defendants  
25                          Email: [ann.summers@kingcounty.gov](mailto:ann.summers@kingcounty.gov)  
26                          [allyson.zerba@kingcounty.gov](mailto:allyson.zerba@kingcounty.gov)

1                   **CERTIFICATE OF FILING AND SERVICE**

2                   I hereby certify that on May 18, 2020, I electronically filed the foregoing document with  
3 the Clerk of the Court using CM/ECF E-filing System which will send notification of such filing  
4 to the following CM/ECF participant:

5                   Tiffany M. Cartwright  
6                   Timothy K. Ford  
7                   MacDonald Hoague & Bayless  
7                   705 Second Avenue, Suite 1500  
8                   Seattle, WA 98104

9                   I declare under penalty of perjury under the laws of the State of Washington that the  
10 foregoing is true and correct.

11                  SIGNED this 18<sup>th</sup> day of May, 2020.

12                    
13                  JENNIFER REVAK  
14                  Legal Secretary  
14                  King County Prosecuting Attorney's Office